Natural Resource Damage Assessment and Restoration Advisory Committee

Subcommittee 3

July 26-27, 2006
Denver Federal Center, Colorado

Subcommittee 3 Questions

Should DOI revise the CERCLA NRD regulations to permit flexibility to allow for compensating for interim losses with additional restoration projects in lieu of monetary damages for the value of the loss?

- Question originally read in pertinent part: “to encourage compensating for interim losses with additional restoration projects (in lieu of monetary damages)”

How should project-based interim loss compensation claims be calculated?

Subcommittee activities

- Several conference calls
- 2-day, “in person” meeting with presentations by Dr. William H. Desvousges and Dr. Bruce Peacock (economists) (June 5-6, 2006)
- Multiple reference materials distributed

Project-based approaches should be an option

- Comports with restoration objective
- Restoration projects can replace lost services at less cost than the monetized value of the lost services, thereby fostering settlements
  - Fox River; Grand Calumet; [other examples?]
- Analysis can be simpler than valuation
- Easier to explain to public than valuation
- Consistent with OPA approach

Are changes to rules necessary to permit project-based approaches?

Subcommittee members agree that:

- Current rules provide good framework for conducting NRDAs
- Any changes to rules should not modify current focus on services, baseline, causation and use of reliable assessment methods

Current rules on "compensable value"

- "Compensable value is the amount of money required to compensate the public for the loss in services provided by the resource." 40 CFR §11.83(c)(1)
- "Compensable value is measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by a federal or State agency or an Indian tribe . . . and any economic rent accruing to a private party." Id.
- "Other valuation methodologies that measure compensable value in accordance with the public's [willingness to pay], in a cost-effective manner, are acceptable methodologies to determine compensable value under this part." 40 CFR 11.83(c)(3).

Pros/cons of revising regulations

Pros

- Clarity/Transparency
- Eliminate potential obstacle to use of project-based approaches

Cons

- Rulemaking typically arduous
- Changes likely to be challenged in court
- Concern for unintended consequences
- Concern for what might be lost

Available methods for valuing/scaling interim losses

- "Revealed Preference" Methods (Random Utility Models, travel cost methods, hedonic pricing)
  - Uses data on how people actually use resources
- "Stated Preference" Methods (Contingent Valuation, Conjoint Analysis)
  - Uses data derived from answers to hypothetical questions
- Habitat Equivalency Analysis
  - Estimates the ecological value of lost resource services and "scales" compensatory restoration projects without assigning a monetary value to the services

Subcommittee members have different views regarding reliability of "Stated Preference" methods and HEA

Current rules on valuation methodologies

- "The authorized official may choose among the valuation methodologies listed in this section to estimate willingness to pay or may choose other methodologies . . . that . . . satisfy [40 CFR §11.83(c)(3)]." 40 CFR §11.83(c)(2).
  - Listed methodologies: market price, appraisal, factor income, travel cost, hedonic pricing, contingent valuation

Is additional guidance needed on valuation?

Subcommittee members agree that:

- Rules should not sanction or bar the use of any particular methodology
- DOI should identify factors to be used to determine utility and reliability of methods and data inputs
  - Methods: should be verifiable, testable, refutable; accepted by relevant scientific community; peer reviewed; have standards controlling the use of the method; discernible error rate
  - Inputs: valid service metrics that accurately identify service losses; appropriate data quality; baseline condition identification; availability of appropriate substitute resources; comparability of type/quality/quantity of services lost/gained; proportionality of unit restoration cost to unit resource value